

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 159**

Introduced by Bruning, 3

Read first time January 8, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crime; to amend sections 28-109 and 43-279,  
2 Reissue Revised Statutes of Nebraska, and section 28-105,  
3 Revised Statutes Supplement, 1998; to change certain  
4 penalties for gang-related offenses; to provide  
5 notification to Nebraska State Patrol of juvenile law  
6 violators; to eliminate juvenile fingerprinting; to  
7 repeal the original sections; and to outright repeal  
8 section 43-252, Reissue Revised Statutes of Nebraska.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-105, Revised Statutes Supplement,  
2 1998, is amended to read:

3           28-105. (1) For purposes of the Nebraska Criminal Code  
4 and any statute passed by the Legislature after the date of passage  
5 of the code, felonies are divided into nine classes which are  
6 distinguished from one another by the following penalties which are  
7 authorized upon conviction:

8 Class I felony ..... Death

9 Class IA felony ..... Life imprisonment

10 Class IB felony ..... Maximum-life imprisonment

11                               Minimum-twenty years imprisonment

12 Class IC felony ..... Maximum-fifty years imprisonment

13                               Mandatory minimum-five years imprisonment

14 Class ID felony ..... Maximum-fifty years imprisonment

15                               Mandatory minimum-three years imprisonment

16 Class II felony ..... Maximum-fifty years imprisonment

17                               Minimum-one year imprisonment

18 Class III felony .... Maximum-twenty years imprisonment, or

19                               twenty-five thousand dollars fine, or both

20                               Minimum-one year imprisonment

21 Class IIIA felony ... Maximum-five years imprisonment, or

22                               ten thousand dollars fine, or both

23                               Minimum-none

24 Class IV felony ..... Maximum-five years imprisonment, or ten

25                               thousand dollars fine, or both

26                               Minimum-none

27           (2) All sentences of imprisonment for Class IA, IB, IC,  
28 ID, II, and III felonies and sentences of one year or more for

1 Class IIIA and IV felonies shall be served in institutions under  
2 the jurisdiction of the Department of Correctional Services.  
3 Sentences of less than one year shall be served in the county jail  
4 except as provided in this subsection. If the department certifies  
5 that it has programs and facilities available for persons sentenced  
6 to terms of less than one year, the court may order that any  
7 sentence of six months or more be served in any institution under  
8 the jurisdiction of the department. Any such certification shall  
9 be given by the department to the State Court Administrator, who  
10 shall forward copies thereof to each judge having jurisdiction to  
11 sentence in felony cases.

12 (3) Nothing in this section shall limit the authority  
13 granted in sections 29-2221 and 29-2222 to increase sentences for  
14 habitual criminals.

15 (4) A person convicted of a felony for which a mandatory  
16 minimum sentence is prescribed shall not be eligible for probation.

17 (5) A person convicted of a felony committed in the  
18 course of gang activity shall be subject to the penalty for the  
19 felony classification one level higher than that otherwise  
20 prescribed in subsection (1) of this section for the crime  
21 committed.

22 Sec. 2. Section 28-109, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 28-109. For purposes of the Nebraska Criminal Code,  
25 unless the context otherwise requires:

26 (1) Act shall mean a bodily movement, and includes words  
27 and possession of property;

28 (2) Aid or assist shall mean knowingly to give or lend

1 money or credit to be used for, or to make possible or available,  
2 or to further activity thus aided or assisted;

3 (3) Benefit shall mean any gain or advantage to the  
4 beneficiary including any gain or advantage to another person  
5 pursuant to the desire or consent of the beneficiary;

6 (4) Bodily injury shall mean physical pain, illness, or  
7 any impairment of physical condition;

8 (5) Conduct shall mean an action or omission and its  
9 accompanying state of mind, or, where relevant, a series of acts  
10 and omissions;

11 (6) Deadly physical force shall mean force, the intended,  
12 natural, and probable consequence of which is to produce death, or  
13 which does, in fact, produce death;

14 (7) Deadly weapon shall mean any firearm, knife,  
15 bludgeon, or other device, instrument, material, or substance,  
16 whether animate or inanimate, which in the manner it is used or  
17 intended to be used is capable of producing death or serious bodily  
18 injury;

19 (8) Deface shall mean to alter the appearance of  
20 something by removing, distorting, adding to, or covering all or a  
21 part of the thing;

22 (9) Dwelling shall mean a building or other thing which  
23 is used, intended to be used, or usually used by a person for  
24 habitation;

25 (10) Gang shall mean an ongoing group, club,  
26 organization, or association of five or more persons that (a) has  
27 as one of its primary purposes the commission of or conspiracy to  
28 commit any felony involving controlled substances, the commission

1 of or conspiracy to commit any felony offense of violence or which  
2 has as an element the use or attempted use of physical force  
3 against a person, or any combination of such felonies and (b) the  
4 members of which engage or have engaged within the past five years  
5 in a continuing series of the felony offenses listed in subdivision  
6 (a) of this subdivision;

7 (11) Gang activity shall mean an action committed by a  
8 person who (a) participates in a gang with knowledge that its  
9 members engage or have engaged in a continuing series of felony  
10 offenses or conspiracy to commit felony offenses involving  
11 controlled substances, felony offenses or conspiracy to commit  
12 felony offenses of violence or which have as an element the use or  
13 attempted use of physical force against a person, or any  
14 combination of such felonies and (b) intends to promote or further  
15 the felonious activities of the gang or maintain or increase his or  
16 her position in the gang through the felonious activities  
17 committed;

18 (12) Government shall mean the United States, any state,  
19 county, municipality, or other political unit, any branch,  
20 department, agency, or subdivision of any of the foregoing, and any  
21 corporation or other entity established by law to carry out any  
22 governmental function;

23 (13) ~~(11)~~ Governmental function shall mean any activity  
24 which a public servant is legally authorized to undertake on behalf  
25 of government;

26 (14) ~~(12)~~ Motor vehicle shall mean every self-propelled  
27 land vehicle, not operated upon rails, except self-propelled chairs  
28 used by persons who are disabled;

1            (15) ~~(13)~~ Omission shall mean a failure to perform an act  
2 as to which a duty of performance is imposed by law;

3            (16) ~~(14)~~ Peace officer shall mean any officer or  
4 employee of the state or a political subdivision authorized by law  
5 to make arrests, and shall include members of the National Guard on  
6 active service by direction of the Governor during periods of  
7 emergency or civil disorder;

8            (17) ~~(15)~~ Pecuniary benefit shall mean benefit in the  
9 form of money, property, commercial interest, or anything else, the  
10 primary significance of which is economic gain;

11           (18) ~~(16)~~ Person shall mean any natural person and where  
12 relevant a corporation or an unincorporated association;

13           (19) ~~(17)~~ Public place shall mean a place to which the  
14 public or a substantial number of the public has access, and  
15 includes but is not limited to highways, transportation facilities,  
16 schools, places of amusement, parks, playgrounds, and the common  
17 areas of public and private buildings and facilities;

18           (20) ~~(18)~~ Public servant shall mean any officer or  
19 employee of government, whether elected or appointed, and any  
20 person participating as an advisor, consultant, process server, or  
21 otherwise in performing a governmental function, but the term does  
22 not include witnesses;

23           (21) ~~(19)~~ Recklessly shall mean acting with respect to a  
24 material element of an offense when any person disregards a  
25 substantial and unjustifiable risk that the material element exists  
26 or will result from his or her conduct. The risk must be of such a  
27 nature and degree that, considering the nature and purpose of the  
28 actor's conduct and the circumstances known to the actor, its

1 disregard involves a gross deviation from the standard of conduct  
2 that a law-abiding person would observe in the actor's situation;

3 (22) ~~(20)~~ Serious bodily injury shall mean bodily injury  
4 which involves a substantial risk of death, or which involves  
5 substantial risk of serious permanent disfigurement, or protracted  
6 loss or impairment of the function of any part or organ of the  
7 body;

8 (23) ~~(21)~~ Tamper shall mean to interfere with something  
9 improperly or to make unwarranted alterations in its condition;

10 (24) ~~(22)~~ Thing of value shall mean real property,  
11 tangible and intangible personal property, contract rights, choses  
12 in action, services, and any rights of use or enjoyment connected  
13 therewith; and

14 (25) ~~(23)~~ Voluntary act shall mean an act performed as a  
15 result of effort or determination, and includes the possession of  
16 property if the actor was aware of his or her physical possession  
17 or control thereof for a sufficient period to have been able to  
18 terminate it.

19 Sec. 3. Section 43-279, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 43-279. (1) The adjudication portion of hearings shall  
22 be conducted before the court without a jury, applying the  
23 customary rules of evidence in use in trials without a jury. When  
24 the petition alleges the juvenile to be within the provisions of  
25 subdivision (1), (2), (3)(b), or (4) of section 43-247 and the  
26 juvenile or his or her parent, guardian, or custodian appears with  
27 or without counsel, the court shall inform the parties:

28 (a) Of the nature of the proceedings and the possible

1 consequences or dispositions pursuant to sections 43-284 to 43-286,  
2 43-289, and 43-290 that may apply to the juvenile's case following  
3 an adjudication of jurisdiction;

4 (b) Of such juvenile's right to counsel as provided in  
5 sections 43-272 and 43-273;

6 (c) Of the privilege against self-incrimination by  
7 advising the juvenile, parent, guardian, or custodian that the  
8 juvenile may remain silent concerning the charges against the  
9 juvenile and that anything said may be used against the juvenile;

10 (d) Of the right to confront anyone who testifies against  
11 the juvenile and to cross-examine any persons who appear against  
12 the juvenile;

13 (e) Of the right of the juvenile to testify and to compel  
14 other witnesses to attend and testify in his or her own behalf;

15 (f) Of the right of the juvenile to a speedy adjudication  
16 hearing; and

17 (g) Of the right to appeal and have a transcript for such  
18 purpose.

19 After giving such warnings and admonitions, the court may  
20 accept an in-court admission by the juvenile of all or any part of  
21 the allegations in the petition if the court has determined from  
22 examination of the juvenile and those present that such admission  
23 is intelligently, voluntarily, and understandingly made and with an  
24 affirmative waiver of rights and that a factual basis for such  
25 admission exists. The court may base its adjudication provided in  
26 subsection (2) of this section on such admission.

27 (2) If the juvenile denies the petition or stands mute  
28 the court shall first allow a reasonable time for preparation if



1 needed and then consider only the question of whether the juvenile  
2 is a person described by section 43-247. After hearing the  
3 evidence on such question, the court shall make a finding and  
4 adjudication, to be entered on the records of the court, whether or  
5 not the juvenile is a person described by subdivision (1), (2),  
6 (3)(b), or (4) of section 43-247 based upon proof beyond a  
7 reasonable doubt. If an Indian child is involved, the standard of  
8 proof shall be in compliance with the Nebraska Indian Child Welfare  
9 Act, if applicable.

10 (3) If the court ~~shall find~~ finds that the juvenile named  
11 in the petition is not within the provisions of section 43-247, it  
12 shall dismiss the case. If the court finds that the juvenile named  
13 in the petition is such a juvenile, it shall make and enter its  
14 findings and adjudication accordingly, designating which  
15 subdivision or subdivisions of section 43-247 such juvenile is  
16 within. The ~~the~~ court shall allow a reasonable time for  
17 preparation if needed and then proceed to an inquiry into the  
18 proper disposition to be made of such juvenile.

19 (4) If the court makes a finding and adjudicates that the  
20 juvenile is within the provisions of subdivision (1) or (2) of  
21 section 43-247, the court shall issue an order requiring the  
22 Nebraska State Patrol to be notified, in a manner specified by the  
23 Superintendent of Law Enforcement and Public Safety, of (a) the  
24 identity of the juvenile, (b) the court in which such adjudication  
25 was made, (c) the date on which such adjudication was made, (d) the  
26 court docket number, and (e) the felony or misdemeanor offense  
27 which was the basis for the adjudication.

28 Sec. 4. Original sections 28-109 and 43-279, Reissue

1 Revised Statutes of Nebraska, and section 28-105, Revised Statutes  
2 Supplement, 1998, are repealed.

3 Sec. 5. The following section is outright repealed:

4 Section 43-252, Reissue Revised Statutes of Nebraska.